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VIA FACSIMILE FEBRUARY 20, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ni et al.

Docket No.: PF210D1

Application No.: 09/227,854

Group Art Unit: 1646

Filed: January 11, 1999

Examiner: M. Brannock

For: Human Chemotactic Cytokine I PolypeptidesTRANSMITTAL LETTER & STATUS INQUIRYCommissioner for Patents
Washington, D.C. 20231

Sir:

Further to the Interview Summary mailed October 23, 2002, and previous telephone discussions with the Examiner, Applicants understand that the Examiner intended to issue a new Office Action applying U.S. Patent No. 6,313,267 against the instant claims. Applicants have not yet received such an Action.

However, as was recently done in the parent U.S. Application No. 08/761,289 (to which this application claims priority), Applicants submit herewith a Declaration of Jian Ni, Guo-Liang Yu, Pedro Alfonso, and Reiner Gentz Under 37 C.F.R. § 1.131, with Exhibits A-E, showing that Applicants were in possession of the presently claimed invention prior to the March 6, 1995 foreign priority date of U.S. Patent No. 6,313,267. Nevertheless, Applicants point out that under 35 U.S.C. § 102(e), an issued U.S. patent is only effective prior art as of its U.S. filing date. See, e.g., M.P.E.P. §§ 2136.03 and 2308.01; *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966).

Applicants note that the instant declaration is not executed by joint inventor Jeffrey Su; Applicants' representative was unable to locate Dr. Su in order to execute the declaration. In particular, the undersigned sent a copy of the declaration to the last known address (3 North Slope, Clinton, NJ 08809) for Dr. Su via certified mail, return receipt requested, on December 2, 2002. The envelope was returned as undeliverable. The undersigned also attempted to locate Dr. Su through several online address searches, employment records, and former colleagues, but was unsuccessful. However, M.P.E.P. § 715.04 indicates that where it is shown that a joint inventor is "unavailable, the signatures of the remaining joint inventors are sufficient."

Applicants respectfully submit that the above facts demonstrate that Dr. Su is unavailable, and thus the declaration should be accepted without Dr. Su's signature.

Applicants respectfully request that the Examiner enter the Declaration and consider it when preparing the previously discussed Office Action. Applicants also request that the Examiner advise the undersigned as to when the Office Action will be completed, or if any further action by Applicants would expedite prosecution.

Dated: February 20, 2003

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

1. Fax Cover Sheet
2. Transmittal Letter & Status Inquiry (3 pages, including Cert. of Transmission)
3. Declaration of Jian Ni, Guo-Liang Yu, Pedro Alfonso, and Reiner Gentz Under 37 C.F.R. § 1.131 (3 pages in 4 counterparts; 12 pages total)
4. Exhibits A-E (5 pages)

I hereby certify that the above-listed correspondence is being facsimile transmitted to the United States Patent and Trademark Office on February 20, 2003.



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